



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Giannini et al. Examiner: Wasylchak, S.
Application No.: 09/531,102 Group Art Unit: 3624
Filed: March 17, 2000 Docket No.: JARB.004PA
Title: Merged Images Viewed Via A Color-Code Scheme

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence and the papers, as described hereinabove, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, on April 28, 2005.

By: Erin M. Nichols
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APPEAL BRIEF

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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Sir:

This is an Appeal Brief submitted pursuant to 37 C.F.R. § 41.37 for the above-referenced patent application. Please charge Deposit Account No. 50-0996 (JARB.004PA) in the small-entity amount of \$250.00 for this brief in support of appeal as indicated in 37 C.F.R. § 41.20(b)(2). If necessary, authority is given to charge/credit deposit account 50-0996 (JARB.004PA) any additional fees/overages in support of this filing.

Also attached, please find a Petition for Extension of Time.

05/03/2005 HVU0N61 00000069 500996 09531102
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I. Real Party in Interest

The real party in interest is the assignee, Jarbridge, Inc.

II. Related Appeals and Interferences

While Appellant is aware of other pending applications owned by the above-identified assignee, Appellant is unaware of any related appeals, interferences or judicial proceedings that would have a bearing on the Board's decision in the instant appeal.

III. Status of Claims

Claims 17-22 are presented for appeal and each of the appealed claims, 17-22, is rejected. The pending claims under appeal, as presently amended, may be found in the attached Appendix ofAppealed Claims.

Claims 1-16 are hereby canceled.

IV. Status of Amendments

No amendments were filed subsequent to the final Office Action dated November 2, 2004.

V. Summary of Invention

Commensurate with independent claim 17, the present invention is directed to a system and method for on-line viewing of multiple apparel articles (e.g., blouse and slacks) that bear true colors which cannot be accurately discerned via on-line (e.g., computer monitor) viewing. One aspect of the present invention is generally directed to viewing at least two articles on-line and matching the articles by color using a color-identification standard. An example implementation of this aspect of the present invention involves on-line viewing of a first and second article through linking nodes. A coded color matching approach uses respective color codes that are provided with the articles to the computer device to permit the computer device to determine whether the respective color codes (associated with the articles) satisfy a matching criterion. An advantage of such an implementation is that a user is able to have the computer device differentiate among varying shades of a similar color (e.g., multiple shades of blue) that would otherwise appear the same

on a computer display; for example, the computer device determines automatically and accurately whether a particular shade of blue matches or clashes with another item of an apparently similar shade of blue.

One embodiment of the present invention is directed to a system for comparison of multiple apparel articles. *See, e.g.*, page 5, lines 17-25 and in Figure 1, the sellers 114. The system includes an on-line viewer site 112 and a computer-driven web-linking engine 101. The computer-driven web-linking engine is configured and arranged to display a first colored apparel article selected by an on-line viewer from the on-line viewer site for display with a second colored apparel article that is also selected by an on-line viewer from the on-line viewer site 102 and/or 103. The computer-driven web-linking engine is adapted to use a color matching criterion to determine whether the first colored apparel article color matches the second colored apparel article color. *See, e.g.*, page 6, lines 8-15.

As required by 37 C.F.R. § 41.37(c)(1)(v), a concise explanation of the subject matter defined in the independent claims involved in the appeal is provided herein. Appellant notes that representative subject matter is identified for these claims; however, the abundance of supporting subject matter in the application prohibits identifying all textual and diagrammatic references to each claimed recitation. Appellant thus submits that other application subject matter, which supports the claims but is not specifically identified above, may be found elsewhere in the application. Appellant further notes that this summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to the appended claims and their legal equivalents for a complete statement of the invention.

VI. Grounds of Rejection

Claims 17-22 are rejected under 35 U.S.C. § 103(a) over Rose (U.S. Patent No. 5,930,769) in view of Gerber (U.S. Patent No. 4,843,574).

VII. Argument

The Section 103(a) rejection of claims 17-22 is improper because the Examiner fails to present prior art that teaches the claimed invention as a whole: multiple aspects are absent from the asserted references and there is no evidence in the record of the requisite motivation.

A. The Examiner fails to present correspondence between the proposed combination of teachings and the claimed invention: when neither reference teaches or suggests at least one important aspect of the claimed invention, the references as combined cannot be shown to teach this aspect.

At least three claimed aspects are absent from both of the cited references ('769 reference and '574 reference). These absent limitations include: 1) two colored apparel articles selected from and displayed for an on-line viewer site, 2) a computer-driven web-linking engine relative to the on-line viewer site, and 3) a color matching criterion in the computer device for determining whether a first and second colored apparel article match. Thus, a combination of these references could not possibly correspond to the claimed invention.

As discussed in the summary above, the claimed invention is directed to using a computer-driven web-linking engine to perform a color-matching service based upon a color matching criterion to determine whether images of two colored apparel articles, obtained and displayed electronically, match.

Notwithstanding additional limitations of dependent claims, the Examiner admits at page 10 that the '769 reference fails to teach these three above-discussed aspects of claim 17. The Examiner states that the '769 reference fails to "disclose a second colored apparel article selected by an on-line viewer from the on-line viewer site." The '769 reference shows a jacket and skirt of a day suit as one article, with neither the jacket nor the skirt being selectable or viewable separately from one another. With respect to the remaining two aspects, the Examiner states that the '769 reference fails to disclose "the computer-driven web-linking engine adapted to use a color matching criterion . . ." and also fails ". . . to determine whether the first colored apparel article color matches the second colored apparel article color." Thus, the '769 teachings are deficient with respect to each of these three claimed aspects.

The '574 reference also fails to teach each of the three above-discussed aspects. Regarding the first aspect, the '574 reference makes no mention of such a second article.

Further, none of the cited portions of the ‘574 reference, including letters A and B of Figure 1, teach a second article being selected from an on-line viewer site. The Examiner’s citation to column 2, line 36 teaches that a human body may be shown along with a representation of a garment or other piece of apparel, *i.e.*, one or the other. The citation to column 2, line 3, is unrelated to this first claimed aspect as it refers to selecting or producing material that is later used to create a garment. Therefore, the ‘574 reference fails to teach two colored apparel articles selected from and displayed for an on-line viewer site.

With respect to the second and third above-discussed aspects, each of the Examiner’s citations to the ‘574 reference fail to identify corresponding teachings: a computer-driven web-linking engine relative to the on-line viewer site, and a color matching criterion in the computer device for determining whether a first and second colored apparel article match. For example, the ‘574 reference discloses at column 2, line 55 – column 3, line 24; column 4, line 54 – column 5, line 11; and at column 5, lines 29-37, an example of a color measuring system as taught in the instant Specification. None of the citations to the ‘574 reference, teach any sort of web-linking or web-linking engine or any color matching criterion in the computer device for determining whether a first and second colored apparel article match.

Moreover, viewing the claimed invention “as a whole” (35 U.S.C. § 103(a)), the Examiner attempts to ignore the claimed limitations by alleging that the claim language is technical jargon and alleging that HTML software having link instructions would correspond to the claimed web-linking engine. However, these allegations are not relied upon in the rejection and no evidence has been presented that any of the cited references teach the Examiner’s alleged HTML software or any use of a web-linking engine for determining whether colors of two colored apparel articles match. A review of the ‘574 reference fails to reveal any use of a computer-driven web-linking engine; there is no discussion of linking to the web or any web sites. Further, the ‘574 reference does not use the color measuring system to compare and match the colors of two colored apparel articles but rather uses the measuring system to identify a color and use the identifying information to specify dyes necessary to create the color (*e.g.*, match the created color to that of the color on the screen).

In view of the above, the Examiner’s rationale for the rejection is flawed. The Examiner acknowledges that the ‘769 reference lacks correspondence to at least each of the three above-discussed aspects. As discussed above, the ‘574 reference also fails to

correspond to these three aspects. Thus, since neither of the cited references teaches these three claimed aspects, a combination of these references must also be deficient. Without a showing of complete correspondence between the proposed combination and each of the claimed limitations, the Section 103(a) rejection is improper and Appellant accordingly requests that the rejection be reversed.

Claims 19-22

With particular respect to dependent claims 19-22, the Examiner fails to identify where either of the cited references teach any of the limitations directed to stores, as claimed. The Examiner admits that the '769 reference fails to disclose any of the claimed limitations directed to a colored item (whether a first or second item) being retrieved from or provided by a store. A review of the '574 reference indicates no teaching of any store, including a first store, second store, or a retail store. Thus, the proposed combination of references fails to correspond to numerous of Appellant's claimed limitations, including, for example: retrieving the first colored apparel item from a first store and the second colored apparel item from a second store (*e.g.*, claim 19), retrieving the first colored apparel item and the second colored apparel item from the same store (*e.g.*, claim 20), at least one of the first colored apparel article and the second colored apparel article provided by a retail store and wherein the computer-driven web-linking engine is configured and arranged to be operated independent from the retail store (*e.g.*, claim 21), and retrieving the first colored apparel item from a first store and the second colored apparel item from a second store and wherein the computer-driven web-linking engine is configured and arranged to be operated independent from each of the stores (*e.g.*, claim 22). Without a showing of correspondence between the proposed combination and each of the claimed limitations, the Section 103(a) rejection is improper and Appellant accordingly requests that the rejection be reversed.

B. The Examiner fails to present any evidence of motivation to combine the cited references as asserted, and no evidence of record suggests the asserted combination.

In an attempt to overcome the above-identified admitted deficiencies in the ‘769 reference, the Examiner suggests modifying the ‘769 teachings “to determine whether the first colored apparel article color matches the second colored apparel article color for the advantage of customizing by comparing styles with different color combinations.” No evidence for this assertion has been provided and Appellant is confused by the assertion, specifically, as to what the Examiner is suggesting is to be “customized.” Case law has more explicitly defined that the evidence of motivation must be specifically identified and shown by some objective teaching in the prior art leading to the modification: “Our court has provided [that the] motivation to combine may be found explicitly or implicitly: 1) in the *prior art references* themselves; 2) in the knowledge of those of ordinary skill in the art that certain *references*, or disclosures in those references, are of special interest or importance in the field; or 3) from the nature of the problem to be solved, ‘leading inventors to look to *references* relating to possible solutions to that problem.’” *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 57 U.S.P.Q.2d 1161 (Fed. Cir. 2000). This failure to provide any evidence of motivation or suggestion from the cited references would render the Section 103(a) rejection improper.

At page 3 of the Office Action, in purportedly attempting to provide evidence of motivation, the Examiner asserts that the ‘769 and ‘574 references share core common objectives, *e.g.*, making apparel. However, this assertion is blatantly false as neither the cited ‘769 abstract nor the stated objectives at col. 1, line 65 – col. 2, line 29 make any mention of making apparel. Appellant accordingly submits that the Examiner continues to fail to present evidence of motivation. Thus, this failure to provide any evidence of motivation or suggestion from the cited references renders the Section 103(a) rejection improper and the rejection should be reversed.

C. The Examiner's proposed modification of the '769 reference frustrates the purpose of the '769 teachings.

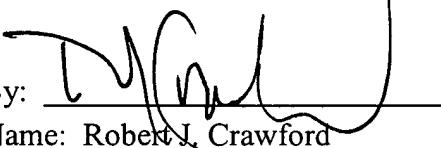
Moreover, the proposed modification of the '769 reference is improper because the combination of the cited references would frustrate the purpose of the '769 reference. The MPEP states that when a proposed modification would render the teachings being modified unsatisfactory for their intended purpose, then there is no suggestion or motivation to make the proposed modification under 35 U.S.C. § 103(a). *See MPEP § 2143.01.* The '769 reference is directed to a method for fashion shopping among a set inventory of apparel. *See title, abstract.* The Examiner alleges that the skilled artisan would modify the '769 teachings with those of the '574 reference to be able to customize by comparing styles with different color combinations. However, the '574 reference teaches a method for a fashion designer to alter the colors of proposed fashion designs. Column 2, lines 40-44. The '769 shopper would not customize the colors of the apparel items for sale in the '769 method because the set inventory items are not available in such customized colors. The shopper would not be able to purchase the customized items, thus undermining the shopping function of the '769 reference. To suggest combining the '574 reference's color alteration system with the '769 teachings is untenable. The proposed combination would fail to produce fashion items available for purchase, and therefore, the combination is improper. Thus, the Section 103(a) rejection of claims 17-22 should be reversed.

VIII. Conclusion

In view of the above, Appellant submits that the rejection is improper, the claimed invention is patentable, and that the rejection of claims 17-22 should be reversed. Appellant respectfully requests reversal of the rejection as applied to the appealed claims and allowance of the entire application.

Authority to charge the undersigned's deposit account was provided on the first page of this brief.

Respectfully submitted,

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APPENDIX OF APPEALED CLAIMS

17. A system for comparison of multiple apparel articles, comprising:
an on-line viewer site; and
a computer-driven web-linking engine configured and arranged to display a first colored apparel article selected by an on-line viewer from the on-line viewer site for display with a second colored apparel article selected by an on-line viewer from the on-line viewer site, the computer-driven web-linking engine adapted to use a color matching criterion to determine whether the first colored apparel article color matches the second colored apparel article color.
18. The system of claim 17 wherein the computer-driven web-linking engine is configured and arranged to display an image corresponding to a structure dressed with the first colored apparel item and the second colored apparel item.
19. The system of claim 17 wherein the computer-driven web-linking engine is configured and arranged to retrieve the first colored apparel item from a first store and the second colored apparel item from a second store.
20. The system of claim 17 wherein the computer-driven web-linking engine is configured and arranged to retrieve the first colored apparel item and the second colored apparel item from the same store.
21. The system of claim 17 wherein at least one of the first colored apparel article and the second colored apparel article are provided by a retail store and wherein the computer-driven web-linking engine is configured and arranged to be operated independent from the retail store.
22. The system of claim 17 wherein the computer-driven web-linking engine is configured and arranged to retrieve the first colored apparel item from a first store and the

second colored apparel item from a second store and wherein the computer-driven web-linking engine is configured and arranged to be operated independent from each of the stores.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.